

## **REMARKS**

### **Introduction**

Applicant wishes to express sincerest gratitude for the thorough examination provided in the most recent Office Action dated April 20, 2006, and that the Examiner saw fit to withdraw certain rejections responsive to Applicant's previous response under 37 CFR 1.111.

As will be apparent herebelow, Applicant has reviewed and carefully considered the comments and position presented by the Examiner and has responded accordingly. As will be evident, Applicant has undertaken positive efforts to move the present application to issue. In particular, minor clarifying amendments to claims are herein requested with care to avoid inclusion of NEW MATTER. It is sincerely believed that Applicant's response taken as a whole clearly removes all outstanding issues.

### **Regarding Claim Objections (in previous Office Action, 12/15/2005)**

Speaking of outstanding issues, the Examiner had (earlier) objected to Claims 16 and 17 as improperly dependent on non-elected (parent) Claim 14. Applicant's 03/14/2006 response to the Examiner's objection presented amendments altering dependency of Claims 16 and 17 to parent Claim 15. It is assumed for the record that the previous objection has been withdrawn.

**Regarding current amendments requested relative to Claims**

Changes proposed herein relative to Claim 1 are for the purpose of still more specifically defining Applicant's claimed showerhead device as having spray holes "defined therein" [See line 2]. Further, the claimed valve which had been described as defining an air pathway is now succinctly recited as "an air pathway defining valve" [See line 7].

Another change is proposed to the concluding "wherein" clause (See lines 10-13 of Claim 1). This requested revision is to distinctly point out that when water flowing through claimed spray holes is turned off, air is drawn through the valve and air pathway into the shower head above the holes. Similar changes are requested for Claims 3, 6, 10, 11 and 15-17.

These are minor changes falling within the four corners of the original disclosure, and their entry is believed to positively avoid any ambiguity in terms of the claimed structures.

**Regarding Examiner's Arguments**

The Examiner's recent Office Action (mail-dated April 20, 2006) makes references to Applicant's prior arguments relative to the Parry ('733) patent. Parry was previously applied as an *anticipating* reference under 35 USC 102(b)

and additionally as a principal reference in a rejection based on 35 USC 103, combined with secondary reference Burke ('988). It is apparent (by their absence) that prior (*viz., first action*) rejections under 35 USC 102(b) and 35 USC 103 stand as withdrawn. The Examiner's "Response to Arguments" appears to continue addressing the environment issue central to the earlier 35 USC 102(b) rejection.

For the record, it is noted that Applicant agrees *in principal* with the Examiner's position, namely: *"If the prior art structure (in this instance, Parry '733) is capable of performing the intended use, then it meets the claim."* Applicant respectfully asserts that Parry does *not* in reality meet the terms of the claims. Indeed, as will be discussed below, the harsh environment and industrial nature of the Parry system raise serious questions about Examiner's presumption of an *"inherently implied showerhead."*

Furthermore, environmental conditions under which the Parry system operates emerge as still more problematic with the Examiner's proposed modification of Parry (under 35 USC 103) in view of the secondary reference teaching of Langdon (or Burke, as previously suggested). Langdon's backflow prevention valve is demonstrated below as having a water retention feature that renders Parry inoperable *relative to its own intended use in environments with temperature extremes.*

**Regarding Claim Rejections Based on 35 USC 103**

The Examiner presently rejects Claims 1, 3, 6, 10, 11 and 15-17 as unpatentable over Parry ('933) in view of Langdon ('393). Parry, it is pointed out, includes a showerhead device having an air pathway 35 positioned along a water pathway 11 to 13, with an upstream portion 11 and downstream portion 13 and beyond.

The Examiner further asserts that showerhead 15 includes spray holes, though such spray holes are, the Examiner admits, "not numbered or shown, but inherently implied." (Applicant respectfully points out that the spray holes also are *not disclosed* by Parry.) Continuing, the Examiner asserts that "when water is turned off, air is drawn through the air pathway (*sic.*) the said showerhead above the spray holes to enable said showerhead to drain more completely."

Applicant does not take issue with this air pathway function and confirms from studying the Parry patent disclosure, that Parry's weep hole and its associated relief tube 35 (at a lower side of the Parry conduit) may function as an air vent facilitating gravity flow of water through the showerhead (Parry, '733, Col. 5, ll. 57-60). However, Applicant strenuously objects to the Examiner's assertion of "inherently implied" spray holes (as discussed above) on the ground that industrial requirements for the Parry safety shower would not safely accommodate a showerhead with holes.

Parry's showerhead must be capable of delivering a drenching supply of water on demand in an extreme emergency, for example to safely flush a person whose clothes, skin and/or hair are on fire or ravaged by caustic chemicals. Parry describes his shower system as including a 1 ½ inch ID piping system (col. 4, line 29). This considerably enlarged diameter will deliver nine times the flow volume of residential shower pipes which typically include only ½ inch ID piping. Applicant contends that such a high volume flow is wholly incompatible with typical showerhead spray holes.

Parry makes no mention of the use of spray holes on showerhead face 15. In fact, it is highly likely there are no openings at all, other than the open-ended conduit common to industrial emergency shower systems. The demand for a copious flow of water could overwhelm smaller spray holes and result in delivery of a spray so forceful as to be painfully devastating to chemically burned eye tissue or burn-excoriated skin.

Thus, in any event, Applicant asserts that spray holes are by no means *inherently implied*. That said, it is important to note that Applicant's claimed invention distinguishes from the prior art in other ways, as well.

A distinguishing feature present in all pending claims is the inclusion of a valve positioned upstream of said spray holes. To meet this claimed feature, the

('393). Applicant's position is that Langdon's valve would not be a suitable choice, and for the following reasons.

The Langdon reference, according to the Examiner, teaches a valve "which is automatically closed when fluid flows through it, and automatically opened when fluid is not flowing." Langdon's valve includes a hole "V" and a membrane in the form of a tapered tubular sleeve 1 that moves against hole "V" when fluid flows through the valve. It would be obvious, the Examiner asserts, to provide the Parry system with the automatic valve taught by Langdon.

Presumably, the Examiner would have the Langdon valve inserted into Parry's piping 13' at a location somewhere upstream of Parry's shower head. Whether the Langdon valve would be located at the weep hole and tube 35 or, alternatively, additional, new holes "V" would be added to piping 13', is not explained in the Examiner's rejection. In any case, it is believed that Examiner's proposed addition of the valve taught by Langdon to the Parry shower system would *not* be obvious to a skilled artisan. The valve would not operate as Parry would require and, in fact, would prove detrimental to Parry's system for reasons that will now be explained.

Langdon is a backflow prevention valve (not unlike Burke's valve, previously discussed). The Langdon reference concerns itself with the flow of two fluids under the control of two valves. Langdon permits a principal fluid flow path

through casing 6 from the upper inlet 7 thereof near attachment member 9 toward a lower end designated outlet 8. A check valve member 1 (which alternatively may be flat or domed, Fig. 1 and Fig. 3) is a deformable material capable of retaining (either) normal shape and having an intake end forming a partition 2, 2E. The partition is illustrated as including slits 3 or 3S that are *normally closed*, but open to the principal fluid flow.

At a level just below Langdon's partition 2 are plural openings V referred to as vent means ported through the casing 6. The partition 2 further includes a flexible skirt 5 that reacts to internal pressure (of primary fluid flowing through slits 3 or 3S) to contact the casing 6 and close vent means V. When primary fluid flow ceases (or is terminated) and internal pressure subsides, skirt 5 moves away from (and opens) vent means V. Also, and importantly, slits 3 or 3S return to their normally closed position.

Assuming again that Langdon's valve has been placed in Parry's piping 13' so as to permit an influx of air (or pressure equalization) to facilitate gravity flow of water through Parry's showerhead 15 (a basic feature, by the way, already present in Parry's system), the Langdon structure will introduce a new, unwanted element in the Parry system. By returning to their normally closed position, valve slits 3, 3S will act to retain primary fluid at the upstream side (inlet 7).

Creating a fluid retention zone in this manner is contrary, even defeating, to Parry's system where great effort is expended to ensure that liquids *will not be retained* where they will become dangerously overheated or subject to disabling freezing. Effectively, therefore, modifying the Parry system with a Langdon valve serves to "destroy the reference" (namely, Parry) insofar as its own stated purposes and objectives are concerned. In a word, the rejection is improper.

Thus, Applicant disagrees with the Examiner's argument because the elements for *prima facie* obviousness (see MPEP 706.02[ j]) have not been met by the prior art reference combination proposed by the Examiner because (in addition to other reasons):

(a) there was no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; and

(b) there was not a reasonable expectation of success at the time the Applicant invented the claimed system.

Moving beyond these arguments set forth above, Applicant's claims have once again been amended to still further distance them from the prior art. These amendments clearly define over Parry as modified in view of Langdon. It is sincerely believed that Claims 1, 3, 6, 10, 11 and 15-17 as presently amended warrant Examiner's favorable consideration. Prompt allowance of such claims is



earnestly and respectfully requested. Further, with the allowance of Claim 1, it is respectfully requested that Examiner examine and allow others of the currently withdrawn claims as would be appropriate under Manual of Patent Examining Procedure (MPEP) guidelines.

### **SUMMARY**

The Examiner's very thorough Office Action rejected Claims 1, 3, 6, 10, 11, 15, 16 and 17. In that Action, rejections were applied under 35 USC 103 as based on a patent to Parry proposed as being modified in view of Langdon. The Examiner asserted that it would be obvious to provide the Parry shower system with the backflow prevention valve drawn from the teachings of Langdon. Applicant respectfully disagrees.

This response points out that the Parry patent does not include the elements recited in the claims, particularly as currently amended and presented for reconsideration. Applicant asserts that the Examiner's proposed combination of references Parry and Langdon not only is non-obvious, but also inappropriate, unworkable and detrimental to the Parry system rather than helpful.

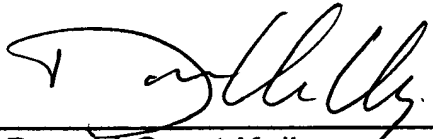
A case for *prima facie* obviousness has not been made due to absence of motivation and reasonable expectation of success. Applicant concludes that the present claims particularly as they are presently amended clearly define over these references and all other known prior art.

It is Applicant's sincere belief that none of the presented amendments raises issues of New Matter. Thus, entry of the proposed amendments is requested, followed by Examiner's early and positive reconsideration of all outstanding rejections and objections.

### IN CLOSING

In the interest of expediting prosecution, Applicant has made an earnest effort to present a full and complete response as well as compelling support for patentability. If unresolved issues remain (including any requirement for additional fee payments), which issues could be eliminated through a discussion with Applicant's representative, Examiner Hogan is again invited to contact the undersigned by telephone at the below-indicated number.

Respectfully submitted on behalf of Applicant,

  
\_\_\_\_\_  
Donald Grant Kelly  
Registration No. 30,521  
07/18/2006  
\_\_\_\_\_  
DATE

OFFICE OF DONALD GRANT KELLY  
Intellectual Asset Management Associates, LLC  
515 King Street, Suite 420  
Alexandria, VA 22314  
PH: 703 548 8213 FX: 703 684 6048  
Email: [dgrantk@aol.com](mailto:dgrantk@aol.com)